

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA,	:	CASE NO. 1:04-CV-156
	:	
PLAINTIFF,	:	Dlott, J.
	:	Black, M.J.
vs.	:	
	:	
REAL PROPERTY KNOWN AND	:	
NUMBERED AS 1446 BERCLIFF	:	
AVENUE, CINCINNATI, HAMILTON	:	
COUNTY, OHIO, WITH ALL	:	
APPURTENANCES, IMPROVEMENTS,	:	
AND ATTACHMENTS THEREON, <i>et al.</i> ,	:	
	:	
DEFENDANTS.	:	

**REPORT AND RECOMMENDATION¹ THAT PLAINTIFF'S MOTION FOR
JUDGMENT ON THE PLEADINGS (doc. 30) AND MOTION FOR DEFAULT
JUDGMENT (doc. 32) BE GRANTED**

The United States filed a verified Complaint for Forfeiture in Rem on February 24, 2004. (Doc. 1.)

The Court recognized the jurisdiction it had over Defendant 2 when it issued a Warrant of Arrest in Rem on March 2, 2004. (Doc. 6). The Warrant required any person or entity claiming an interest in Defendant 2 to file a Verified Claim, that is, a statement of interest in, or right against, the Defendants with the Clerk of the Court within thirty (30) days after receipt of actual or published notice of this action and the arrest of the Defendants and to file an Answer within twenty (20) days after the filing of the Claim.

¹ Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

The Warrant further required the United States to publish notice of the arrest of Defendant 2 and the forfeiture action in a newspaper of general circulation in the Southern District of Ohio.

The United States Marshals Service arrested Defendant 2 on May 21, 2004, bringing Defendant 2 within the jurisdiction of the Court. (Doc. 14.)

The United States attempted to serve a copy of the Summons, Complaint, Writ of Entry, Warrant of Arrest in Rem, Notice and Interrogatories by certified mail upon: Phoebea Stokes at 1445 Bercliff Avenue, Cincinnati, Ohio, 45223; Austell Stokes, Jr. 1445 Bercliff Avenue, Cincinnati, Ohio 45223; Austell Stokes, Jr. DBA American Auto Brokers & Buyers LTD., 1446 Bercliff Avenue, Cincinnati, Ohio 45223; and Austell Stokes Registered Agent of American Auto Brokers & Buyers LTD, 7310 Vine Street, Cincinnati, Ohio 45216. Each were returned “unexecuted.” (Doc. 13.) The Summons and Warrant of Arrest in Rem directed any person or entity claiming an interest in the Defendant to file a Claim with the Clerk of the Court within thirty days after receipt of actual or published notice of this action and to file an Answer to the United States' Complaint within twenty days after the filing of the Claim.

The United States published notice of this civil forfeiture action in the Cincinnati Court Index Press, a newspaper of general circulation in the Southern District of Ohio, once a week for three consecutive weeks, commencing on June 18, 2004. (Doc. 15.)

The Stokes, *pro se*, filed a Motion for Extension of Time to File Verified Statement of Interest and Answer to Complaint or Otherwise Plead on June 17, 2004

(Doc. 10.) On June 28, 2004, this Court issued an Order granting the Stokes' motion (Doc. 11.)

Union Savings Bank filed a Motion for Extension of Time to File Claim and Answer, along with its claim and answer as to Defendant 1 on June 8, 2006 (Docs. 20, 21, & 22.) Union Savings Bank has initiated a foreclosure action regarding Defendant 1 in the Hamilton County Court of Common Pleas in which an Order for Sale was entered on July 30, 2007. (Case No. A0604049).

On April 4, 2007, this Court Ordered the Stokes to show cause why a default should not be entered against them for failure to file a verified claim and answer. The Stokes were ordered to file a verified claim and answer by April 18, 2007. (Doc. 24.)

On June 20, 2007, the Stokes filed an "Answer" as to Defendant 1, which was docketed as a Response to Order to Show Cause. (Doc. 28).

On August 27, 2007, plaintiff filed a motion for judgment on the pleadings. (Doc. 30). On August 28, 2007, the Clerk of this Court entered a default against Austell Stokes, Jr., Pheobia D. Stokes, American Auto Brokers and Buyers Ltd., Defendant 2, which is the Contents of Checking Account XXXX2805, Foundation Bank, in the name of Austell Stokes, Jr. and American Auto Brokers and Buyers Ltd., and all other persons and entities who might have an interest in Defendant 2 for failure to file a claim and answer pursuant to 18 U.S.C. § 983(a)(4)(A) and (B) and Rule G of the Supplemental Rules for Certain Admiralty and Maritime Claims. (Doc. 31).

That same day, plaintiff filed a motion for Default Judgment pursuant to Fed.R.

Civ. P. 55(b)(2). (Doc. 32).

No memorandum in opposition had been timely filed, as to either motion, and on November 14, 2007, claimants were Ordered to Show Cause in writing why plaintiff's motion for judgment on the pleadings, and/or for default judgment should not be granted and a Decree of Forfeiture entered pursuant to 18 U.S.C. § 981(a)(1)(A), 18 U.S.C. § 981(a)(1)(C), 21 U.S.C. § 881(a)(6), and/or 31 U.S.C. § 5317(c)(2). (*See* Doc. 33.)

Claimants did not respond to the Show Cause Order. Additionally, no other person or entity has filed a claim or an answer as to Defendant 2, and the time to do so has expired.

Accordingly, the undersigned hereby **RECOMMENDS** that plaintiff's motion judgment on pleadings (doc. 30) and motion for default judgment (doc. 32) be **GRANTED**. Thus, in accordance with Fed. R. Civ. P. 55(b)(2), 18 U.S.C. § 983(a)(4)(A) and (B), and Rule G of the Supplemental Rules for Certain Admiralty and Maritime Claims, a default judgment should be granted to the United States against Austell Stokes, Jr., Pheobia D. Stokes, American Auto Brokers and Buyers Ltd., Defendant 2, which is the Contents of Checking Account XXXX2805, Foundation Bank, in the name of Austell Stokes, Jr. and American Auto Brokers and Buyers Ltd., and all other persons and entities having an interest in Defendant 2 for failure to file a claim and answer.

It is further **RECOMMENDED** that all right, title, and interest in the subject property be CONDEMNED and FORFEITED to the United States pursuant to 18 U.S.C.

§ 981(a)(1)(A), 18 U.S.C. § 981(a)(1)(C), 21 U.S.C. § 881(a)(6), and/or 31 U.S.C. § 5317(c)(2). All right, title, and interest in Defendant 2 be vested in the United States of America and no right, title, or interest shall exist in any other person or entity. The United States Marshal Service shall dispose of the subject property in accordance with the law.

Date: December 12, 2007

s/Timothy S. Black
Timothy S. Black
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation (“R&R”) within **TEN (10) DAYS** of the filing date of this R&R. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections within **TEN (10) DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).